

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1362 – HB 1293

April 10, 2013

SUMMARY OF ORIGINAL BILL: Creates the offense of “continuous sexual abuse of a child,” which can be sentenced as a Class A or Class B felony.

Defines “sexual abuse of a child” as the commission of an act upon a minor child that is a violation of aggravated rape of a child between 13 and 18 years of age; rape of a child between 13 and 18 years of age; aggravated sexual battery; rape of a child; sexual battery of a child by an authority figure; soliciting sexual exploitation of a minor, exploitation of a minor by electronic means; aggravated rape of a child; or statutory rape by an authority figure.

Defines “multiple acts of sexual abuse of a child” as:

- a) Engaging in at least one incident of sexual abuse of a child upon three or more children;
- b) Engaging in three or more incidents of sexual abuse of a child upon the same child; or
- c) Engaging in five or more incidents of sexual abuse of a child involving two or more children.

At least one incident of sexual abuse of a child must occur after July 1, 2013.

A person commits “continuous sexual abuse of a child” if:

- Over a period of 90 days or more, engages in multiple acts of sexual abuse of a child under a) or b); or
- Over a period less than 90 days, engages in multiple acts of sexual abuse of a child under c).

Continuous sexual abuse of a child is a Class A felony if at least three of the acts of sexual abuse of a child constitute a violation of aggravated rape of a child between 13 and 18 years of age, a Class A felony; rape of a child between 13 and 18 years of age, a Class B felony; aggravated sexual battery, a Class B felony; rape of a child, a Class A felony; or soliciting sexual exploitation of a minor, exploitation of a minor by electronic means, a Class B felony.

Continuous sexual abuse of a child is a Class B felony if:

- At least three of the acts of sexual abuse of a child constitute a violation of sexual battery by an authority figure, a Class C felony, or statutory rape by an authority figure, a Class C felony; or
- There are less than three acts of sexual abuse of a child for aggravated rape of a child between 13 and 18 years of age; rape of a child between 13 and 18 years of age; aggravated sexual battery; rape of a child; or soliciting sexual exploitation of a minor, exploitation of a minor by electronic means; aggravated rape of a child; but there are at least three acts under any combination of aggravated rape of a child between 13 and 18 years of age; rape of a child between 13 and 18 years of age; aggravated sexual battery;

rape of a child; sexual battery of a child by an authority figure; soliciting sexual exploitation of a minor, exploitation of a minor by electronic means; aggravated rape of a child; or statutory rape by an authority figure.

Authorizes a prosecution for continuous sexual abuse, rather than for each offense individually, and authorizes such prosecution to be brought in any county in which one of the incidents of sexual abuse of a child occurred.

Requires notice to be given to the defendant that the State is prosecuting for continuous sexual abuse of a child.

Requires jury to unanimously agree that defendant committed continuous sexual abuse of a child; does not require the jury to unanimously agree on which specific acts of sexual abuse were committed by the defendant.

Prohibits a defendant from being convicted of continuous sexual abuse of a child and of one or more of the separate incidents of sexual abuse that were identified in the notice. A prosecution for continuous sexual abuse, however, does not bar prosecution in the same action for individual incidents not identified in the pre-trial notice.

Prohibits release eligibility for persons convicted of continuous sexual abuse of a child. Offender must serve 100 percent of the sentence, without reduction from sentencing credits.

Offenders must be sentenced of community supervision for life.

Creates new rule of evidence, based on Rule 413 of the Federal Rules of Evidence, that permits the prosecution to introduce, and for the jury to hear, evidence that the defendant committed any other offense that would constitute a violation of, or an attempt to commit a violation of, continuous sexual abuse of a child; aggravated rape; rape; aggravated sexual battery; rape of a child; sexual battery of a child by an authority figure; soliciting sexual exploitation of a minor, exploitation of a minor by electronic means; aggravated rape of a child; or statutory rape by an authority figure.

The bill contains a severability clause.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$300,000/Incarceration*

SUMMARY OF AMENDMENT (006681): Adds a provision that requires either a common method or characteristic in the commission of the offense or the victims of the incidents of sexual abuse of a child have common characteristics with each other or with the defendant, which include but are not limited to being related to the defendant by blood or marriage, residing with the defendant, or the defendant being an authority figure and the victims knew each other.

Removes the provisions that would allow the State to prosecute multiple allegations of sexual abuse of a child against one defendant in one prosecution in one venue.

Requires the jury to unanimously agree on at least three specific acts of sexual abuse alleged against a defendant to convict the defendant under (e)(1) of the bill. The original bill only required the jury to agree that three or more acts occurred, but did not require the jury to agree on which acts constituted those three or more acts.

Requires the jury to unanimously agree on at least five specific acts of sexual abuse alleged against a defendant to convict the defendant under (e)(2) of the bill. The original bill only required the jury to agree that five or more acts occurred, but did not require the jury to agree on which acts constituted those five or more acts.

Removes the provision that would allow the court to admit and the jury to hear evidence that the defendant committed any other offense that would constitute a violation of, or an attempt to commit a violation of, continuous sexual abuse of a child; aggravated rape; rape; aggravated sexual battery; rape of a child; sexual battery of a child by an authority figure; soliciting sexual exploitation of a minor, exploitation of a minor by electronic means; aggravated rape of a child; or statutory rape by an authority figure.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$200,000/Incarceration*

Assumptions for the bill as amended:

- If the State chooses to prosecute for continuous sexual abuse of a child, then the State may not prosecute for the individual incidents of alleged sexual child abuse listed in the pre-trial notice that must be provided to the defendant. Thus, if a person is arrested for eight alleged incidents of sexual child abuse, the State may prosecute four of the charges as separate offenses, and prosecute the other four as continuous sexual abuse of a child.
- The bill would result in sexual battery by an authority figure and statutory rape by an authority figure being enhanced to a Class B felony; as well as rape, aggravated sexual battery, and soliciting sexual exploitation of a minor, exploitation of a minor by electronic means, Class B felonies, being enhanced to a Class A felony. The bill would result in some offenders serving longer sentences than if they had been convicted of an individual offense, but would also result in fewer convictions as the bill precludes prosecution of the individual incidents identified in the pre-trial notice.
- For purposes of this note, it is assumed that prior convictions for “sexual abuse of a child,” as defined in the bill, will not be used to establish “multiple acts of sexual abuse of a child.” Rather, it is assumed that the bill is intended to address cases in which multiple allegations of sexual abuse of a child are raised against one individual that were previously unknown.

- It is assumed that the bill would result in two admissions every three years sentenced as a Class B felony in which the incidents at issue are either sexual battery by an authority figure or statutory rape by an authority figure, Class C felonies.
- It is also assumed that the bill would result in two admissions every three years sentenced as a Class A felony in which the incidents at issue are rape if the child is between 13 and 18 years of age, aggravated sexual battery, soliciting sexual exploitation of a minor, or exploitation of a minor by electronic means, Class B felonies.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- The bill would result in two admissions every three years serving an additional 10.49 years (15.78 years, the average time served for a Class A felony – 5.29 years, the average time served for a Class B felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders every three years serving an additional 10.49 years (3,831.47 days) for an annualized total cost of \$163,910 $[(\$64.17 \times 3,831.47 \text{ days} \times 2 \text{ offenders}) / 3 \text{ years}]$.
- The bill would result in two admissions every three years serving an additional 2.31 years (5.29 years, the average time served for a Class B felony – 2.98 years, the average time served for a Class C felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders every three years serving an additional 2.31 years (843.73 days) for a total of \$36,095 $[(\$64.17 \times 843.73 \text{ days} \times 2 \text{ offenders}) / 3 \text{ years}]$.
- The total incarceration cost is \$200,005 $(\$163,910 + \$36,095)$.
- Due to the low number of convictions the bill would result in, it is assumed that the courts, district attorneys, and public defenders can accommodate any impact to their caseloads within existing resources.
- Many of the criminal offenses that constitute “sexual abuse of a child” already require the felon to serve 100 percent of the sentence, and the offenses not required to serve 100 percent will be enhanced under the bill. Requiring 100 percent of the sentences for “continuous sexual abuse of a child” to be served will not have a significant impact on incarceration costs.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/trm